

PHI THI NGUYEN, et al.,)	
)	Civil Action No. 3:10-cv-5267-BHS
Plaintiffs,)	
v.)	MOTION TO COMPEL WEXFORD
)	DEFENDANTS TO DISCLOSE THE
COUNTY OF CLARK, et al.,)	ADDRESSES AND TELEPHONE
)	NUMBERS OF INDIVIDUALS IDENTIFIED
Defendants.)	PURSUANT TO RULE 26 AND FOR
)	SANCTIONS
)	
)	NOTE ON MOTION CALENDAR:
)	OCTOBER 15, 2010

Plaintiffs move the Court for an order compelling defendants Wexford Health Sources, Inc., Daniel L. Conn, Nickolas A. Little, Carol L. Rance, Kelly E. Epperson, Gladys C. Maynard, Reginald D. Lewis, Daniel J. Gorecki, Rita A. Laurent and Susan M. Bankston (the “Wexford defendants”) to disclose the addresses and telephone numbers of the two current and twelve former employees listed in their Fed. R. Civ. P. 26(a)(1) Initial Disclosures, and to impose appropriate sanctions. This motion is based on the declaration of counsel filed herewith, and records and files contained herein.

On July 27, 2010, the parties participated in a Rule 26(f) teleconference, during which plaintiffs' counsel requested defendants to consider the need for depositions beyond the Fed. R. Civ. P. 30(a)(2) ten deposition limit. Dkt. # 55 at 2 (Joint Status Rpt.). This is a significant issue, given the number of defendants and other witnesses likely to have discoverable information, coupled with the fact that the defendants and most of the witnesses in this matter are comprised

1 of Clark County's and Wexford's current and former officers, agents and employees. *Id.* at 2 -3.
 2 Defendants would not consider any changes to the presumptive deposition limit. *Id.* at 3.
 3 However, they agreed to "work professionally and efficiently, and will cooperate in the exchange
 4 of reports, materials and the scheduling of necessary depositions." *Id.*

5 On August 30, 2010, the Wexford defendants served their Fed. R. Civ. P. 26(a)(1) Initial
 6 Disclosures, in which they listed two current and twelve former employees likely to have
 7 discoverable information. However, each individual was listed as having the address and
 8 telephone number of the Wexford defendants' attorney. Meyer Dec, Ex 1. Counsel for the
 9 Wexford defendants has taken the position that Fed. R. Civ. P. 26(a)(1)(A)(i) does not require
 10 them to disclose the addresses and telephone numbers of individuals who they represent, which
 11 includes the two current and twelve former employees. *See* Meyer Dec, Ex 2 and 3. However,
 12 the Wexford defendants offer no case law or other support suggesting that Fed. R. Civ. P.
 13 26(a)(1) disclosures should be limited to counsel's address and telephone number, thereby
 14 necessitating this motion. *See* Meyer Dec, Ex 3.

15 **III. ARGUMENT**

16 Federal Rule 26(f) requires that parties confer to consider the nature of the case, and to
 17 make the initial required disclosures pursuant to Rule 26(a). The purpose of Rule 26(a) is to
 18 "accelerate the exchange of basic information about the case and to eliminate the paper work
 19 involved in requesting such information." Fed. R. Civ. P. 26, advisory committee note of 1993.
 20 Initial disclosures, like all mandatory disclosures under the Federal and Local Rules, are integral
 21 to the parties' ability to move a case forward expeditiously. "The goal of the initial disclosure
 22 requirement is to get out basic information about the case at an early point." *Stamps v. Encor*
 23 *Receivable Mgmt.*, 232 F.R.D. 419, 422 (N.D. Ga. 2005). Under Rule 37, if a party fails to make
 24 a disclosure required by Rule 26(a), any other party may move to compel disclosure and for
 25 appropriate sanctions. Fed. R. Civ. P. 37(a)(3)(A).

26 Identification of individuals pursuant to Fed.R.Civ.P. 26(a)(1)(A)(i) includes providing
 27 their addresses and telephone numbers, if known. "The rule expressly states as much." *Dixon v.*
 28 *Certainfeed Corp.* 164 F.R.D. 685, 689 (D. Kan. 1996); *see also Fausto v. Credigy Services*

1 *Corp.* 251 F.R.D. 427, 429 (N.D. Cal. 2008). The Wexford defendants may not satisfy this
 2 obligation by disclosing its counsel's address and telephone number. Further, they may satisfy
 3 this obligation by disclosing an individual's business address and telephone number only if they
 4 know of no other address and number. *Dixon*, 164 F.R.D. at 689; *Fausto*, 251 F.R.D. at 429.
 5 Finally, the Wexford defendants "may not pose its concern [that plaintiffs' counsel will contact
 6 represented parties outside their attorney's presence] as cause to unilaterally disregard its duties
 7 of disclosure under Rule 26(a)." *Dixon*, 164 F.R.D. at 689. "[T]he court assumes attorneys will
 8 be ethical, absent some evidence to show otherwise." *Id.*

9 The personal home address, telephone number, and cellular phone number of each
 10 individual likely to have discoverable information is essential in order for plaintiffs to contact the
 11 individuals if allowed, to investigate the individuals' backgrounds and serve the individuals with
 12 process. *See Thurby v. Encore Receivable Management, Inc.*, 251 F.R.D. 620 (D. Colo. 2008).
 13 "[T]horough background investigations . . . may lead to the discovery of admissible evidence."
 14 *Id.* at 622 (internal quotations and ellipsis omitted).

15 By failing and refusing to disclose the addresses and telephone numbers of individuals
 16 likely to have discoverable information, the Wexford defendants have undermined the Court's
 17 ability to manage discovery and hampered plaintiffs' ability to obtain basic information needed
 18 to evaluate and prepare its case. In addition, the Wexford defendants' unjustifiable refusal to
 19 produce address and telephone information undermines the credibility of their agreement to work
 20 professionally and efficiently, and cooperate in the exchange of information.

21 **IV. CONCLUSION**

22 Plaintiffs respectfully request this Court to require the Wexford defendants to disclose the
 23 home addresses and telephone numbers of the individuals listed in their Initial Disclosures, and
 24 impose such sanctions as are appropriate.

25 DATED: September 30, 2010.

26 DAVID P. MEYER, P.C.

27 By: s/ David P. Meyer
 28 David P. Meyer, WSBA 19643
 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Motion to Compel Wexford Defendants to Disclose the Addresses and Telephone Numbers of Individuals Identified Pursuant To Rule 26 and For Sanctions on:

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— by mailing a full, true and exact copy thereof with the U.S. Postal Service in Portland, Oregon in a sealed, first-class postage prepaid envelope to the attorney's last known address as shown above on the date set forth below.

— by delivering a full, true and exact copy thereof to the attorney and/or to the attorney's office with a clerk or other person in charge as shown above on the date set forth below.

x by filing a full, true and exact copy thereof to the attorney by electronic means in accordance with the court's Electronic Filing Procedures on the date set forth below.

— by sending a full, true and exact copy thereof to the attorney by electronic means on the date set forth below.

DATED: September 30, 2010.

s/ David P. Meyer

David P. Meyer

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